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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 15 1996

Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of the Pay)
Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

REPLY COMMENTS OF GATEWAY TECHNOLOGIES, INC.

Gateway Technologies, Inc. ("Gateway"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding.¹ Gateway urges the Commission to reject the proposal of the APCC's Inmate Calling Services Providers Coalition ("Coalition") for imposition of a \$0.90 per-call set use fee on calls originated from "inmate only" payphones in correctional institutions.²

INTRODUCTION

Gateway, a leading provider of inmate telecommunications services, has actively participated in all of the Commission's proceedings concerning inmate service regulation since 1990, including the Billed Party Preference ("BPP") proceeding (CC Docket No. 92-77).³ Gateway has adopted a progressive position of working with public

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254 (released June 6, 1996) ("NPRM").

² Comments of the Inmate Calling Services Providers Coalition at 14-16 (filed July 1, 1996) ("Coalition Comments").

³ See, e.g., *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd. 2744, 2752 (1991) (exempting inmate-only CPE from definition of "aggregator"), citing Gateway Comments.

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interest groups, such as Citizens United for the Rehabilitation of Errants ("CURE"), to combat those few carriers in the inmate services industry charging excessive rates. Gateway has helped to establish a well-developed and thorough record in the BPP proceeding on the security and fraud prevention needs inherent in providing telephony service to inmates, and has proposed in that proceeding that the Commission place a "cap" on inmate service provider rates at AT&T's current daytime inmate rates.⁴

The Coalition's proposal for a \$0.90 payphone charge—on top of their existing 0+ collect inmate rates—must be rejected for procedural, legal and public policy reasons. The Commission should defer any consideration of inmate rate regulation to the BPP proceeding, in which comments are due on July 17,⁵ where all interested parties will have the opportunity to comment on (and propose) Commission approaches to fashioning just and reasonable inmate service rates. As a substantive matter, this radical measure is unnecessary, costly and double recovery, as the costs of inmate payphone CPE are already included in inmate service rates. The FCC should thus reject the proposed \$0.90 inmate per-call fee because—contrary to the Coalition's assertions—it is not supported by Section 276 of the Telecommunications Act of 1996 ("1996 Act"), under which "fair" compensation for 0+ inmate traffic is the commissions paid by the inmate carrier. Furthermore, the Coalition's proposal inappropriately seeks federal preemption of state inmate rate regulation. Rather than approving application of a \$0.90 surcharge for collect calls placed by inmates, the FCC should instead adopt Gateway's

⁴ Letter from Glenn B. Manishin, Counsel for Gateway, to William F. Caton, FCC, CC Docket No. 92-77 (May 5, 1995).

⁵ *Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 96-253 (released June 6, 1996) ("BPP Second Further Notice").

proposed rate cap which mirrors, across the board, the inmate service charges of an appropriate rate surrogate.

DISCUSSION

I. THIS PROCEEDING IS AN IMPROPER FORUM FOR COMMISSION CONSIDERATION OF A \$0.90 PER-CALL CHARGE FOR INMATE SERVICE PROVIDERS

The Coalition's submission of an inmate service surcharge proposal in this proceeding is at best out of context and at worst an attempt to side-step the Commission's efforts, in CC Docket No. 92-77, to implement a balanced solution in the area of inmate service regulation. Since 1994, the Commission—through the BPP proceeding—has examined and developed a thorough and complete record on the regulatory treatment of inmate telecommunications services. As the Coalition concedes, inmate service providers “not only provide” payphone CPE, but also “an integrated package of services that, in the inmate environment, are inherently linked.”⁶ Thus, the Commission simply cannot divorce inmate-only payphone compensation from the ultimate issue of rates for 0+ inmate calls.

The Commission initially considered BPP as a possible regulatory solution to complaints over excessive rates charged by operator services providers (“OSP”) and inmate service providers. By allowing callers automatically to select their own carrier, in lieu of the presubscribed provider for the payphone, BPP was initially envisioned as a means to assure just and reasonable rates. Numerous parties, representing inmate

⁶ Coalition Comments at ii.

service providers,⁷ inmates and their families, CPE providers, local exchange companies ("LECs"), correctional institutions and state regulatory agencies, have participated in that proceeding. While the record clearly establishes that the immense costs of BPP outweigh the benefits, and that the carrier-selection function of BPP is impractical for inmate services in light of the unique and substantial security and fraud requirements of correctional institutions,⁸ the Commission continues to consider regulatory alternatives that would put downward pressure on inmate service rates.⁹ The Commission should reject any attempt to end-run these efforts.

By submitting its \$0.90 proposal in this proceeding, the Coalition appears to be trying to avoid the attention that its radical recommendation would draw in CC Docket No. 92-77. Many of the participants in the BPP docket are not payphone providers, and thus are not participating in this proceeding. Moreover, the NPRM in this docket does not propose any special regulatory treatment for inmate-only payphones, or invite comment on the subject. Thus, interested parties have not had any notice of the Coalition's proposal, and approval of a \$0.90 set-use charge for inmate payphones would risk excluding a wide and diverse representation of parties with a significant interest in in-

⁷ Indeed, the Coalition's members are also members of the American Public Communications Council ("APCC"), which has filed its own inmate services rate cap proposal in CC Docket No. 92-77. The APCC proposal is significantly different from the Coalition's proposal in this proceeding.

⁸ See Coalition Comments at 7-11. Gateway agrees with the Coalition that security and fraud prevention needs involved in servicing inmates "require significant capital investment." Coalition Comments at 7. These "exceptional circumstances" are what persuaded the Commission, five years ago, to exempt inmate payphones from the Act's unblocking requirements, permitting inmate service providers to continue routing all inmate calls to a default 0+ collect carrier. The unique costs facing the inmate telecommunications industry, however, are only half of the equation. In formulating an appropriate regulatory framework for inmate service providers, the Commission should also be driven by the principle of ensuring just and reasonable rates.

⁹ BPP Second Further Notice ¶¶ 48-49.

mate telephony regulation, including correctional officials, state agencies and inmate-related public interest groups.

The substance of the Coalition's proposal is simply outrageous. Inmate service providers already impose surcharges for collect calls (the only type permitted) from inmate payphones, and as providers of both equipment and service—or as recipient of 0+ commissions from a third-party collect carrier—are fairly compensated for their costs. As discussed in Section II, the Coalition is asking the Commission here to sanction an extraordinary plea for double-recovery, where its members would recover their equipment expenses once in an FCC-prescribed charged and then again as part of the rates for inmate telecommunications services. This approach is not only bad public policy, but flatly inconsistent with the Commission's correct interpretation of Section 276 of the 1996 Act.

II. THE COALITION'S COMPENSATION PROPOSAL IS INCONSISTENT WITH THE CORRECT INTERPRETATION OF SECTION 276 OF THE 1996 ACT

Emphasizing its role as inmate-only payphone providers, the Coalition defends its compensation proposal on the grounds that Section 276 of the 1996 Act "places an affirmative duty on the Commission to ensure fair compensation for all calls."¹⁰ Even if the Commission determines that this proceeding is a proper vehicle for determining inmate telecommunications rate regulation, the FCC should reject the Coalition's proposal because it is inconsistent with correct implementation of Section 276.

Section 276 provides that the Commission must "establish a per-call compensation plan to ensure that all payphone service providers are fairly compensated for each

¹⁰ Coalition Comments at 5.

and every completed intrastate and interstate call.”¹¹ The need for ensuring fair compensation to payphone service providers arises from the unblocking of payphones. As the NPRM recognizes, “fair compensation” is designed to recover the costs borne by payphone service providers (“PSPs”) in originating calls that are routed, via access code dialing, to an interexchange carrier (“IXC”) other than the presubscribed IXC.¹² Because the PSP does not receive revenue for handling “dial around” traffic—such as “800” calls and calls to non-presubscribed OSPs—Congress enacted Section 276 to require the Commission to provide a regulatory solution ensuring PSPs fair compensation.¹³

As the NPRM recognizes, however, there is no need to fashion cost-recovery regulations for payphones in the context of all 0+ payphone-originated calls. For 0+ traffic, routed to a presubscribed IXC, payphone providers are already fairly compensated through their commission contracts with the presubscribed OSP. Therefore, Commission intervention to provide “fair compensation” is not necessary for 0+ calls, and the NPRM correctly proposes not to require any per-call compensation for this traffic.¹⁴

The Coalition does not dispute the NPRM’s tentative conclusion, but also (and disingenuously) fails to make clear that *all* calls placed from inmate payphones are

¹¹ 47 U.S.C. § 276(b)(1)(A).

¹² NPRM ¶ 16 n.54.

¹³ *Id.*

¹⁴ As the Commission explained: “IXCs have long competed for this type of business. Therefore, we tentatively conclude that we need not prescribe per-call compensation for 0+ calls because competition in this area ensures fair compensation” for PSPs. NPRM ¶ 16. Similarly, “the [private payphone providers] . . . would not enter into a contract that would not compensate them fairly for use of their payphone equipment.” NPRM ¶ 16 n. 65

routed to a presubscribed IXC. In the inmate telecommunications market, security and fraud prevention concerns dictate that all inmate traffic is handled on a 0+ basis, with the preselected inmate service provider serving as the exclusive IXC for that traffic. Providing inmates with "dial around" capability would invite a "tidal wave" of toll fraud jeopardizing both public and inmate security.¹⁵ Thus, the serving inmate carrier is the only 0+ provider for a particular correctional facility.

The same policy reasons that render the "fair" compensation protection of Section 276 inappropriate for 0+ traffic in the general payphone context apply with equal force to inmate payphone providers. Congress did not intend for Section 276 to serve as a profit "safety-net" for private carriers competing with one another for service contracts. Nor does Section 276 anticipate that where an entity serves as both payphone owner and the only permitted carrier serving the phone, as is the case in most inmate service contexts, it should be eligible for inclusion in a compensation scheme designed to offset costs incurred for "dial around" calling. Accordingly, the Coalition's reliance on Section 276 of the Act to support its inmate compensation proposal is without merit and should be rejected by the Commission.

III. THE COALITION SHOULD PETITION STATE REGULATORY AGENCIES, NOT THE FCC, FOR RELIEF FROM STATE-IMPOSED RATE CAPS ON INMATE SERVICES

Although presenting themselves as mere PSPs for purposes of Section 276, the Coalition members nonetheless seek to justify their set-use fee proposal on the basis of

¹⁵ See, e.g., Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77, at 15-21 (filed Aug. 1, 1994); Reply Comments of Gateway Technologies, Inc., CC Docket No. 92-77 (filed September 14, 1994) at 4-6

purported deficiencies in inmate *services* revenue. Indeed, the Coalition unabashedly argues that the Commission should fashion an inmate CPE usage fee because state rate ceilings on inmate service collect calling rates frustrate their ability to maximize profits.

The Coalition suggests that "a large percentage of the inmate 0+ collect calls handled by the [inmate service providers] are intraLATA. In most states, these intraLATA calls are subject to rate ceilings based on incumbent local exchange carriers' . . . standard 0+ collect calling service rates."¹⁶ Yet if the Coalition's concern over its ability to achieve a "fair" compensation really stems from state-imposed rate caps on intrastate inmate traffic, then the appropriate forums for redress are the state regulatory agencies. The FCC is not the proper jurisdictional forum to seek a remedy to state regulations on inmate service rates. States have exclusive jurisdiction over intrastate traffic, and the Commission's Section 276 authority is limited to ensuring fair compensation for payphone equipment. Fashioning a payphone compensation charge to compensate for revenue shortfalls arising from state limitations on intrastate inmate *service* fees would therefore exceed the Commission's statutory authority.

Moreover, since the Coalition's primary impetus for submitting a rate proposal appears to be these state rate caps on intrastate traffic, any relief must be correspondingly limited to intrastate calls. Yet the Coalition's proposal extends beyond intrastate traffic, advocating a \$0.90 compensation charge on *all* inmate-originated traffic. Inmate telephony includes traffic from not only county jails with predominantly intraLATA

¹⁶ Coalition Comments at 5

traffic, but also state and federal prisons with a larger percentage of interLATA and interstate calls. By proposing such a broad solution to a narrow "problem" involving only intraLATA traffic, the Coalition is looking to this Commission to award an unearned, and wholly unnecessary, windfall

IV. ANY COMMISSION-ADOPTED RATE REGULATION OF INMATE SERVICE PROVIDER RATES SHOULD MATCH AT&T's CURRENT DAYTIME INMATE SERVICE RATES

In defending its \$0.90 inmate charge, the Coalition implies that its proposal is comparable to AT&T's inmate telephone rates

In setting a fair level of compensation given the unique costs of the [inmate service providers] integrated package of equipment and services, the Commission should look to AT&T Communications' "AT&T Prison Collect with Controls Service." That federally tariffed service is specifically designed to meet the call control requirements of the inmate environment.

Coalition Comments at 14. This is not correct. The Coalition simplistically calculates its \$0.90 compensation charge merely by subtracting AT&T's \$2.10 collect call surcharge from AT&T's \$3.00 inmate surcharge.¹⁷ The net effect of the Coalition's proposal, however, would be for the Commission to authorize inmate carriers to include an *additional* \$0.90 surcharge on top of their preexisting surcharges and collect 0+ inmate service rates. These charges already account for the costs of inmate payphone CPE, and in the case of many carriers significantly exceed AT&T's inmate service surcharge and rates.

The Coalition's proposal merely pays lip service to using AT&T's inmate rates as a rate "surrogate." If the Coalition truly believes that AT&T's inmate tariff is "specifically designed to meet the call control requirements of the inmate environment

¹⁷ *Id.* at 14.

... which are essentially identical to those offered by the typical [inmate service provider],”¹⁸ then the Coalition should support Gateway’s suggested rate cap in the BPP proceeding. Under Gateway’s proposal, the Commission would impose a cap on inmate service rates at AT&T’s current daytime inmate rates. AT&T inmate rates are composed of a \$3.00 inmate collect surcharge and its regular MTS rates. (AT&T does not apply a unique inmate per-minute rate, but rather relies on its normal rates.) By relying on AT&T’s MTS daytime rates, Gateway’s proposal—which is endorsed by CURE¹⁹—eliminates the excessive and multi-layered pricing structure embodied in the Coalition’s proposal. Rather than extracting pieces of AT&T’s inmate rates, Gateway’s suggested rate cap truly and wholly relies on AT&T as an appropriate “rate surrogate.”

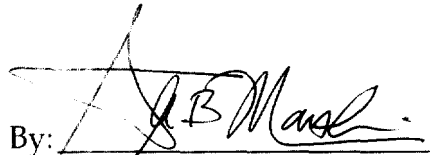
¹⁸ *Id.*

¹⁹ *Reply Comments of Citizens United for Rehabilitation of Errants*, CC Docket No. 92-77, at 3-4 (filed April 27, 1995)(“C.U.R.E. agrees with Gateway that no inmate services rate cap should permit inmate carriers to increase their charges above dominant carrier rates, or protect inmate carriers from the rigors of true rate competition. . . . C.U.R.E. commends Gateway for its efforts to fashion a rate structure that apparently will be substantially lower than the benchmark proposed by [the Coalition].”).

CONCLUSION

For all these reasons, the Commission should reject the Coalition's suggested \$0.90 per-call inmate payphone surcharge and address the issue of inmate service rates in the context of the Billed Party Preference proceeding.

Respectfully submitted,


By: _____

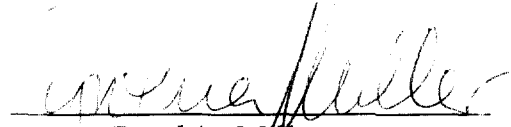
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Dated: July 15, 1996.

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